

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HONG THANH DANG

Claimant

VS.

FARMLAND FOODS, INC.

Respondent

AND

WAUSAU UNDERWRITERS INSURANCE CO.

Insurance Carrier

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Docket No. 208,199

ORDER

On January 9, 1998, the application of claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark on July 31, 1997, came on for oral argument in Wichita, Kansas.

APPEARANCES

Claimant appeared by and through his attorney, Alexander B. Mitchell, II, of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Edward D. Heath, Jr., of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

Claimant raised the following issues for consideration by the Appeals Board:

- (1) What, if any, is the nature and extent of claimant's injury and/or disability?
- (2) Is claimant entitled to additional temporary total disability compensation?

At oral argument the parties acknowledged claimant had been awarded 7.14 weeks temporary total disability compensation in addition to the 2.43 weeks already paid. The parties stipulated that this issue is no longer in controversy and as such the Appeals Board affirms the award of the Administrative Law Judge in this regard.

FINDINGS OF FACT

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

- (1) Claimant suffered accidental injury while working for respondent on October 17, 1995, when he stepped in a crack between two pallets causing him to fall to the floor. He was taken to the nurse's station for a short period of time and then returned to work and concluded his shift for that day. When claimant went home that night he was in pain and could not sleep, with the pain being at the right hip joint below the waist. Claimant underwent conservative care with several doctors and was off work for several short periods of time during which time he was paid temporary total disability compensation.
- (2) Claimant was ultimately referred to Dr. Ronald B. Davis who prescribed physical therapy and exercise. Dr. Davis first saw claimant for this injury in December 1995 and initially diagnosed a contusion of the right hip. Dr. Davis' medical notes indicate a strong history of noncompliance with treatment. Dr. Davis referred claimant to physical therapy and on December 22, 1995, received a statement from the physical therapy department indicating they were closing claimant's case due to noncompliance with the treatment.
- (3) On January 19, 1996, Dr. Davis discharged claimant from further care with instructions that he contact the doctor if he had additional problems. Dr. Davis opined claimant had no permanent functional impairment resulting from the injuries of October 17, 1995.
- (4) Claimant, through court order, came under the care of Dr. Stephen Ozanne, an orthopedic surgeon. Dr. Ozanne first saw claimant on April 12, 1996, and his first impression was sacroiliac strain. He also noticed a leg length inequality that preexisted this

accident. Dr. Ozanne prescribed a 3/8-inch lift to be worn in claimant's left shoe and referred him to physical therapy. After the discharge, Dr. Ozanne opined claimant had a 7 percent whole body functional impairment and placed restrictions of occasional lifting 35 to 45 pounds, frequent lifting 20 pounds, and recommended only occasional repetitive bending, twisting, and turning.

(5) Due to the difference of opinions of the two physicians, the Administrative Law Judge ordered an independent medical examination with Dr. Robert A. Rawcliffe, a board-certified orthopedic surgeon. Dr. Rawcliffe examined claimant on February 11, 1997, and diagnosed a contusion or sprain to the right hip and a lumbosacral sprain/strain as a result of the injury suffered on October 17, 1995.

(6) Dr. Rawcliffe's report indicates claimant suffered an additional injury on December 6, 1995, when he fell and experienced pain in his back, tailbone, and hips. Dr. Rawcliffe noted that, during the physical examination, claimant did not exert full effort. Claimant had a full range of hip motion but had complaints of pain with virtually all hip motions on the right side. Dr. Rawcliffe opined that claimant had adequate time to recover from these injuries and he could find no specific evidence of any serious condition which would explain claimant's persistent symptoms.

(7) Dr. Rawcliffe also noted evidence of symptom magnification and a tendency by claimant to give way when the doctor tested the muscles in the claimant's right leg. The only objective finding by Dr. Rawcliffe was a mild atrophy of the right thigh which Dr. Rawcliffe was unable to correlate with claimant's injury. Dr. Rawcliffe assessed claimant a 5 percent permanent impairment of the right lower extremity as a result of this atrophy but assessed no work restrictions other than certain lifting restrictions due to claimant's slender build. Claimant was 5'7" tall and weighed 115 pounds.

(8) The Administrative Law Judge in considering the reports of the doctors found the opinions of Dr. Davis, the treating physician, and Dr. Rawcliffe to be more credible than Dr. Ozanne. He assessed claimant a 5 percent impairment of function to the right leg because of the atrophy but awarded no work disability as neither Dr. Davis nor Dr. Rawcliffe felt work restrictions were appropriate as a result of this injury.

CONCLUSIONS OF LAW

K.S.A. 44-501 states in part:

"If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to

an award of compensation and to prove the various conditions on which the claimant's right depends."

In this instance, Dr. Davis, the treating physician, described claimant as a symptom magnifier and found no justification for claimant's ongoing complaints. He assessed claimant no functional impairment and no restrictions as a result of the injury of October 17, 1995. Claimant was referred to Dr. Rawcliffe, a board-certified orthopedic surgeon, who further supported Dr. Davis' opinion, finding that claimant did not exert full effort and magnified his symptoms while being tested.

The Administrative Law Judge, in awarding claimant a 5 percent impairment to the right leg, based his award upon Dr. Rawcliffe's functional impairment opinion. However, in reviewing the medical report of Dr. Rawcliffe it cannot be found that this leg atrophy was related to claimant's hip injury of October 17, 1995. In addition, Dr. Rawcliffe could find no evidence of a condition which would explain claimant's persistent symptoms.

As neither Dr. Davis nor Dr. Rawcliffe felt claimant had suffered any permanent impairment to his hip, the Appeals Board finds claimant should be awarded no permanent disability from the accident of October 17, 1995. The 5 percent functional impairment assessed by Dr. Rawcliffe for claimant's atrophied right thigh is not causally connected to this accidental injury.

Claimant is entitled to his outstanding medical, both authorized and unauthorized, up to the statutory maximum and would further be entitled to future medical care upon proper application to and approval by the Director. In addition, the award of temporary total disability compensation is appropriate as respondent did not contest the fact that claimant suffered accidental injury arising out of and in the course of his employment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated July 31, 1997, should be, and is hereby, modified and claimant is granted 9.57 weeks temporary total disability compensation at the rate of \$289.06 per week totaling \$2,766.30 for a total award of \$2,766.30. Claimant is denied permanent disability as a result of this injury.

Claimant is entitled to an award of outstanding medical, both authorized as provided by respondent and unauthorized, up to the statutory maximum per the Award of the Administrative Law Judge.

Future medical will be awarded upon proper application to and approval by the Director.

The fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Barber & Associates	
Deposition of Stephen Ozanne, M.D.	\$152.00
Deposition of Jerry D. Hardin	133.20
Deposition of Hong Dang	275.20
Deposition Services	
Transcript of regular hearing	77.50
Ireland Court Reporting, Inc.	
Deposition of Saundra Werth	227.00
Deposition of Kenny Nghiem	74.00
Deposition of Ronald B. Davis, M.D.	244.50

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Alexander B. Mitchell, II, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director